IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWELFTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT APPEAL No.808 OF 2005

Between:

Suraram Village Development Association,

Rep. By its President Md.Yousufuddin,

S/o.Sherfuddion, R/o.H.No.1-107,

Suraram Village, Qutubullapur Mandal,

Ranga Reddy District.

..... APPELLANT

AND

District Collector,

Ranga Reddy District,

Hyderabad and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT APPEAL No.808 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

Aggrieved by an order dated 28th September, 2004 passed in Writ Petition No.12121 of 2004, the petitioner therein preferred the present Writ Appeal.

The appellant is an Association, a body deemed to have been registered under the A.P.Societies Registration Act, 2001. According to the affidavit filed in support of the petition, the Association consists of 641 members, who are landless persons belonging to economically weaker sections. It appears that they have made a representation in the year 1990 to the respondent Nos.1 and 2 requesting for allotment of house-sites in the Government land in Suraram Village, Qutubullapur Mandal, Ranga Reddy District. While the above representation of the appellant – Association is pending with the respondents 1 and 2, the 3rd respondent herein, which is also a registered Society, made a similar representation to the respondents 1 and 2. The 3rd respondent-Association had earlier approached this Court by way of Writ Petition No.860 of 1993 seeking a direction to the official respondents therein to assign house sites for the members of the 3rd respondent-Association. The said writ petition was allowed by an order of this Court dated 14.12.1993. Pursuant to the directions of this Court in the said writ petition, it appears that house sites were assigned by the official respondents to the members of the 3rd respondent-Association.

Complaining that the assignment of land in favour of the members of the 3rd respondent-Association is vitiated by fraud and that a number of members of the 3rd respondent Association were not eligible for assignment as per the norms applicable to the assignment of house sites, the appellant-Association herein had earlier approached this Court by filing Writ Petition No.14882 of 1999. The appellant-Association sought various reliefs in the writ petition which are as follows:

> " a) to direct the respondent Nos.1 to 3 to direct the respondent Nos.1 to 3 to consider the assignment of pattas in favour of the eligible persons of the Suraram village in the Government land comprised in Sy.Nos.181, 190 and 194 situated at Suraram village, Quthubullapur Mandal, R.R. District and the remaining land may be kept reserved for the benefit of the villagers only.

b) to direct the respondents Nos.1 to 3 to enquire about the allotment of pattas in favour of the alleged members of Respondent No.5 in Sy.No.190 of Surarram village regarding genuinety, eligibility and existence of persons and to take appropriate action for cancellation of the same.

c) to declare the layout sanctioned by respondent No.4 namely HUDA in file No.6586/MP2/HUDA/88 as illegal as it is not in accordance with law and inconfirmity with the actual position on the land."

Broadly, the grievance of the appellant Association in the earlier writ petition was that except inhabitants of the Suraram village, others are not entitled for assignment of house sites and that there should be an enquiry into the genuineness of the claims of the members of the 3rd respondent-Association, who have already been granted house-site pattas, and a direction to the official respondents to take appropriate action i.e. cancellation of the pattas already granted in favour of the members of the 3rd respondent-Association wherever it is found after an appropriate enquiry that the assignment is illegal.

The learned Judge of this Court by an order 6th April, 2001 disposed of the said writ petition. The learned Judge recorded a categoric finding that the plea of the appellant-Association that the assignment of land in Suraram village should only be made in favour of the inhabitants of Suraram village has no basis in law, and declined to grant any relief insofar as the prayer of the appellant that there should be an enquiry into the assignment of land made in favour of the members of the 3rd respondent Association. The learned Judge further directed the official respondents to conduct an enquiry into the eligibility of the members of the appellant Association considering their representation for assignment of house sites and take appropriate decision.

The appellant Association accepted that order and the order had become final. If really the appellant Association was aggrieved by the decision of the learned single Judge in declining to grant relief insofar as the prayer that there should be an enquiry into the assignment of house sites in favour of the 3rd respondent Association, the appellant Association must have taken necessary legal steps by carrying the matter in appeal before the appropriate forum. But, the appellant has admittedly not done so.

On the other hand, the appellant Association filed another Writ Petition No.13603 of 2001 with a prayer as follows:

> "..... issue a direction, order or writ more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents Nos.1 to 4 in not taking any action in respect of the unauthorized constructions being made by the alleged members of the 5th respondent association in Sy.No.190 of Suraram Village, Qutubullapur Mandal, R.R. District and consequentially direct the respondents 1 to 4 not to allow the unauthorized constructions in the said land belongs to the Government."

The said writ petition was disposed by an order of this Court dated 19th July, 2002. A learned single Judge of this Court was pleased to dispose of the writ petition with a direction as follows:

> " Having regard to the same, it would suffice in the interest of justice that the said representation is disposed of so that the deciding authority can take into consideration all the claims and counter-claims and pass appropriate orders. Accordingly, the writ petition is disposed of directing the 3rd respondent-District Collector, Ranga Reddy to consider the said representation dated 21.05.2001 made by the petitioner and dispose of the same in accordance with law after giving opportunity to all the parties, within a period of two months from the date of receipt of a copy of this order."

It is unfortunate that even in this writ petition the prayer was different as also the decision, which was totally unconnected with the prayer. Yet none of the parties to the writ petition carried the matter in appeal, and the order was allowed to become final.

Thereafter the Writ Petition No.12121 of 2004 came to be filed with a prayer as follows:

> " ..... in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the proceedings of the First Respondent i.e., District Collector, Ranga Reddy District under Proceedings No.E5/5173/01 dt.14-6-2004, as illegal, arbitrary and unjust and without proper enquiry as directed in WP No.13603/2001 dt.19-7-2002 and WP No.12803/2003 dt.7-7-2003 and consequently direct the First respondent to take immediate necessary action/steps for canceling the Pattas given to ineligible candidates of the Third Respondent Association and to allot those Pattas to the eligible candidates of the Petitioner Association in Survey No.190 of Suraram Village, Qutubullapur Mandal, Ranga Reddy District."

The order impugned in the said writ petition is dated 14.06.2004, which was passed by the 1st respondent herein. The relevant portion of the order reads as follows:

> " The application dt.21.05.2001 filed by Suraram Village Development Association has been perused and the main contention of Suraram Village

Development Association is that the population of Suraram Village is nearly about 20,000 most of them belongs to BC Weaker Section and landless poor requesting to allot some of the land to the landless poor of the residents of the Suraram Village and the remaining land may be allotted for construction of school and for other public developmental activities in Sy.No.190 of Suraram Village. The main contention of the Society is pattas were granted to non-locals who are ineligible.

Perused the record. The patta certificates were issued to the eligible beneficiaries long back during the year 1990 in Sy.No.190, Suraram Village, after that the Viswakarma Weaker Section Association has filed W.P.No.13071/91 for handing over of possession to the members to whom pattas were granted and to grant pattas to the remaining 246 members. The Hon'ble High Court has given judgment dt.16.12.2001 and another W.P.860/93 filed by the said Association for implementation of the above judgment. The W.P.860/03 is disposed off on 14.12.93, which is discussed in above paras.

According to the above direction, the MRI, Quthubullapur Mandal has handed over the physical possession of the plots to the 565 beneficiaries duly conducting panchanama on 18.03.96 out of 616.

In view of the facts, the Suraram Village Development Association is requested to submit the list of eligible beneficiaries to the Dy.Collector and Mandal Revenue Officer, Quthubullapur Mandal for enquiry to take necessary action. If any eligible beneficiaries are found after enquiry, they will be given patta certificates subject to availability of Government land."

The learned single Judge who heard the writ petition recorded a finding that "in the W.P.No.13603 of 2003 this court only directed the District Collector to consider the representation made by the petitioner dated 21-5-2001 and the same should be disposed of in accordance with law." The learned Judge also took note of the fact that in W.P.No.14882 of 1999 filed by the appellant Association, though a relief was sought for an enquiry into the legality of the assignment made in favour of the

3rd respondent Association herein, such a relief was not granted. In the circumstances, the learned Judge disposed of the writ petition with a direction that it is open for the appellant Association to submit a list of its members, who are eligible for grant of house site pattas and on filing of such a list, the official respondents shall consider the same and pass appropriate orders, if the Government land is available.

This appeal was admitted on 07.06.2005 and in WAMP No.1706 of 2005 an interim order

was passed restraining the members of the

3rd respondent Association not to make any construction on the patta lands assigned to them.

When the matter came up on 26.07.2005, this Court by an order and for the reasons recorded therein, came to a prima facie opinion that the proceedings of the 1st respondent dated 14.06.2004 constitutes contempt of court and directed the 1st respondent to be present in the Court. After appearance of the 1st respondent, the contempt case was closed by an order dated 05.09.2005 for the reasons recorded on that day. It was for the first time in the contempt case, the 1st respondent made a statement that the alleged representation dated 21.05.2001 said to have been given by the appellant Association was not available in the record maintained by him and he explained that by inadvertence, the said fact was not mentioned in the order dated 14.06.2004 and only with a view to help the members of the appellant Association it was mentioned that the appellant-Association be given an opportunity to make a fresh application giving the list of eligible members of the appellant Association for assignment of house sites. It was also brought to the notice of this Court at the time of hearing of the contempt case that during the pendency of appeal and the contempt case, the present incumbent in the office of the Collector, Ranga Reddy District, the 1st respondent herein, passed an order after receiving further representation from the appellant Association.

In fact, when the matter is taken up today, an order dated

29th August, 2005 of the 1st respondent is placed before this Court. The substance of the order is that during the pendency of the contempt proceedings, the 1st respondent directed the Deputy Collector and Mandal Revenue Officer, Quthbullapur, to obtain a list of eligible members of the appellant Association and examine the eligibility of each of the members for assignment of land. It is further stated in the order dated 29.08.2005 that the President of the appellant Association was requested to submit a list of members and the said list consisting of 641 members was in fact submitted by the appellant Association. Thereafter, the official respondents conducted a survey regarding the entitlement of each of the members of the appellant Association and came to the conclusion that out of 641 members of the appellant Association, only 44 members were eligible for assignment of house sites as per the existing norms in this regard and the order further says that in view of the current policy decision of the Government to ban assignment of house sites in the vicinity of Hyderabad

and Ranga Reddy Districts including Quthbullapur (M), the above mentioned 44 members, who were found eligible, were sanctioned houses under VAMBAY Scheme.

Learned counsel for the appellant Sri Prasad strenuously argued that the assignment of land in favour of the members of the 3rd respondent Association calls for a detailed enquiry as according to the appellant Association, the members of the 3rd respondent Association are not eligible for assignment of house sites.

The learned counsel further submitted that the decision of the 1st respondent dated 29.08.2005 is not based on a proper enquiry.

In view of the fact that the order dated 29.08.2005 was passed during the pendency of the present proceedings, we do not propose to express any opinion on the legality of the said order. We leave it open to the parties to seek appropriate remedies available under law. However, in view of the order dated 29.08.2005 passed by the 1st respondent, we do not see any reason to interfere with the order under appeal.

In the circumstances, we do not see any merit in the appeal and the same is dismissed.

JUSTICE J.CHELAMESWAR

12th SEPTEMBER, 2005 JUSTICE M.VENKATESWARA REDDY

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

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12TH SEPTEMBER, 2005

According to the learned counsel, the 1st respondent ought to have given an opportunity by issuing notice of an independent enquiry into the matter and in the absence of any such notice, the decision of the 1st respondent dated 29.08.2005 is in contravention

of the principles of natural justice.

In our view, the first submission of the appellant Association must be rejected straightaway for the reason that this Court by order dated 06-04-2001 had earlier declined to grant such a relief though it was specifically sought for in W.P.No.14882 of 1999, which order was allowed to become final by the appellant and therefore the appellant is precluded from raising that ground any further in subsequent proceedings.

Insofar as the second submission of the learned counsel for the appellant that there was no proper enquiry and there was a failure of natural justice is concerned, we are of the opinion that the said submission is required to be rejected on two counts; one is that in view of the statement of the 1st respondent in the order dated 29.08.2005 that as a matter of policy of the Government, the assignment of land for house sites in the vicinity of Hyderabad and Ranga Reddy Districts including Quthbullapur Mandal is banned, an enquiry into the eligibility of these applicants is in itself futile and therefore, the question whether such an enquiry was in compliance with the principles of natural justice or not would be an idle exercise and we do not propose to indulge in it. Even otherwise, from the said order of the 1st respondent it appears that the appellant Association did not furnish any information regarding their members and it did not maintain any register.